

Margaret M. Fox

pfox@mcnair.net T (803) 799-9800 F (803) 753-3278

June 15, 2012

Ms. Jocelyn Boyd Chief Clerk and Administrator South Carolina Public Service Commission Synergy Business Park, The Saluda Building 101 Executive Center Drive Columbia, South Carolina 29210

Complaint and Petition for Relief of BellSouth Telecommunications, Re: LLC d/b/a AT&T Southeast d/b/a AT&T South Carolina v. Halo Wireless, Inc. for Breach of the Parties' Interconnection Agreement Docket No. 2011-304-C

Dear Ms. Boyd:

Attached please find for filing on behalf of the South Carolina Telephone Coalition, a Brief in the above-referenced matter. Additionally, the South Carolina Telephone Coalition supports the proposed order AT&T South Carolina is filing today in this proceeding.

If you should have any questions, please do not hesitate to contact me.

Very truly yours,

McNAIR LAW FIRM, P.A.

Margaretll. Fox

Margaret M. Fox

MMF:rwm

Enclosure

Parties of Record cc:

McNair Law Firm, P. A. 1221 Main Street Suite 1600 Columbia, SC 29201

Mailing Address Post Office Box 11390 Columbia, SC 29211

mcnair.net

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

Docket No. 2011-304-C

In Re:	Complaint and Petition for Relief)	BRIEF OF
	of BellSouth Telecommunications, LLC)	SOUTH CAROLINA
	d/b/a AT&T Southeast d/b/a AT&T South)	TELEPHONE COALITION
	Carolina v. Halo Wireless, Inc. for Breach)	
	Of the Parties' Interconnection Agreement)	
	_)	

The South Carolina Telephone Coalition ("SCTC") respectfully submits this brief, pursuant to S.C. Code Ann. Regs. § 103-851 and the directive of the Public Service Commission of South Carolina ("Commission") regarding the filing of briefs and proposed orders in this matter.

The issue before the Commission is whether Halo Wireless, Inc. ("Halo") has breached its interconnection agreement ("ICA") with BellSouth Telecommunications, LLC, d/b/a AT&T Southeast, d/b/a AT&T South Carolina ("AT&T) by sending landline traffic to AT&T; providing AT&T with incorrect call data; and refusing to pay for interconnection facilities. AT&T has asked the Commission to find that Halo has materially breached the ICA, that AT&T is excused from further performance under the ICA and may stop accepting traffic from Halo, and that Halo is liable (without quantifying specific amounts due) for access charges for the interstate and interLATA landline traffic Halo has sent to AT&T.

AT&T is entitled to the relief it seeks. The evidence of record clearly shows that Halo has breached its ICA with AT&T by sending significant volumes of landline traffic to AT&T for

termination by AT&T and by "downstream carriers" who subtend AT&T's access tandem, including the South Carolina rural telephone companies ("SC RLECs") who comprise the SCTC. The landline traffic Halo sends to AT&T includes both interstate and (intrastate) interLATA long distance traffic.

Halo erroneously claims that it is a wireless carrier because it utilizes limited wireless facilities in the middle of a call path. Halo also incorrectly argues that Transcom Enhanced Services ("Transcom"), a closely-related business entity that Halo characterizes as its "High Volume end user customer" (*see* Tr. at p. 313, lines 8-9), somehow terminates and re-originates a call in the middle of a call path. *See* Tr. at p. 314, lines 8-10 and p. 315, lines 3-5. Halo is wrong on both counts.

As demonstrated at the hearing on this matter, Halo is not a Commercial Mobile Radio Service ("CMRS") provider. Halo has no CMRS customers in South Carolina, and only 35 customers in the entire country. *See* Tr. at p. 38, lines 4-6. Halo has very limited CMRS facilities in South Carolina. *See*, *e.g.*, Tr. at pp. 261-262. In fact, while the traffic that traverses Halo's network comes from all over South Carolina and the United States, that traffic is transmitted wirelessly only for a distance of approximately 140 feet over facilities that appear to have no function other than to disguise the traffic as wireless traffic. *See* Tr. at p. 261, line 15 through p. 262, line 21; *see also* Tr. at p. 281, line 18 through p. 282, line 18 (the wireless facilities serve no engineering purpose; they merely provide a wireless transportation segment; and they could be replaced with a few inches of CAT5 copper cable that would be much cheaper -- \$5 or \$6 -- and would actually provide a more reliable service.)

Not only is Halo sending landline calls to AT&T in violation of the ICA, but the *majority* of the traffic Halo is sending to AT&T originated as landline calls. *See* Exhibit MN-3, included

in Hearing Exhibit No. 4. If a grandmother in California picks up her landline phone and calls her grandson in Gilbert, SC, it is a landline, long distance call, and the local exchange carrier that terminates the call is entitled to access charges. Halo cannot change the nature of that call by inserting a small portion of wireless transmission facilities in the call path. *See, e.g., In the Matter of Connect America Fund*, FCC 11-161, WC Docket No. 10-90 (rel. November 18, 2011) ("Connect America Fund Order"), at ¶ 1006 (wherein the FCC expressly rejected Halo's claim by clarifying "that a call is considered to be originated by a CMRS provider for purposes of the intraMTA rule only if the calling party initiating the call has done so through a CMRS provider").

Halo made expansive claims at the hearing regarding its "basic intent and mission" to bring wireless broadband services to underserved and unserved communities throughout the United States. *See* Tr. at p. 285, lines 1-9. In fact, the evidence clearly shows that Halo does not provide service to *anyone* in South Carolina other than arguably to Transcom, a closely-related business entity that acts in collaboration with Halo. *See* Tr. at pp. 38-40.

A Halo witness also included a lengthy discourse on interconnection disputes with "the ILECs" when he purported to "summarize" his testimony in the matter. *See* Tr. at p. 294, line 19 through p. 299, line 19. SCTC's counsel moved to strike Mr. Wiseman's summary, and particularly the discussion of disputes with "the ILECs," on the grounds that the summary went well beyond Mr. Wiseman's prefiled testimony in this docket. *See* Tr. at pp. 303-305. The Commission took the motion under advisement. Tr. at p. 305. The Commission should grant SCTC's motion to strike those portions of Mr. Wiseman's summary that address matters that are not included in his prefiled testimony, in accordance with the Commission's long-standing

¹ SCTC Counsel made specific reference to those portions of Mr. Wiseman's written summary that can be found in the Transcript at p. 294, line 19 through p. 299, line 19.

practice. To do otherwise would defeat the purpose of the statute requiring parties to prefile testimony (*see* S.C. Code Ann. § 58-3-140(D)), and would encourage parties to hold back evidence until the hearing.

Halo's claim that Transcom is an end user customer of Halo's that somehow "reoriginates" calls (or, as Halo puts it, "initiates a further communication")² are likewise without merit, for numerous reasons. First, Transcom is not a "customer" of Halo, but is a closely-related business entity that acts in collaboration with Halo, in furtherance of an access avoidance scheme. *See* Tr. at 38-41; Tr. at p. 170, lines 10-18; Tr. at pp. 173-201. Even if Transcom were a customer (indeed the *only* customer) of Halo in South Carolina, Transcom is not an enhanced service provider. *See*, *e.g.*, Tr. at pp. 193-196, 218-222.³ Finally, even if Transcom were providing an enhanced service and initiating a new communication (which it is not), the record shows that whatever enhancement Transcom may allegedly be performing is being done *in Georgia*. *See* Tr. at p. 498. Thus, Halo's claim that these landline, long distance calls are somehow being re-originated as local (South Carolina) wireless calls is completely without merit.

Halo and Transcom have built a business model based on misrepresenting the true nature of the traffic they deliver to AT&T and the SCTC members for termination in South Carolina, thereby avoiding the payment of proper compensation to local exchange carriers. Halo and Transcom market their "service" to third party carriers, who are likely unaware of the details of how Halo and Transcom are able to offer their routing and termination services so cheaply. Halo's operation harms not only AT&T, but "downstream carriers" as well, including the rural telephone company members of SCTC. *See* Tr. at pp. 74-75. These carriers and their customers

² See Tr. at p. 314, lines 8-10.

³ AT&T discusses this legal argument thoroughly in its brief, and we will not repeat it here.

must shoulder the burden of unpaid carrier bills for access services provided. Halo's operation also harms those carriers who properly compensate local exchange carriers for access, because it puts them at a competitive disadvantage to carriers like Halo. Access avoidance schemes harm the public by diverting private capital away from real investment in real networks. *See Connect America Fund Order*, Separate Statement of Commissioner Copps.

The Commission should recognize Halo's operation for what it is – a thinly-disguised access avoidance scheme – and should grant AT&T's request to stop accepting Halo's traffic. Granting the requested relief will serve the public interest, and will benefit not only AT&T and the downstream carriers, but all carriers operating legitimately in South Carolina.

The Commission should look beyond Halo's grandiose, self-serving, and unfulfilled promises to bring wireless broadband to rural areas of South Carolina, and to bring customer choice and new technology to South Carolina. The reality is that (1) Halo arguably has one "customer" in South Carolina – its closely-related business entity, Transcom; and (2) the "new technology" Halo employs is a relatively expensive, 140-foot wireless transmission path that can easily be replaced with a \$6 cable from RadioShack. *See* Tr. at p. 282. Halo's business plan is clearly designed to line its own pockets by bilking South Carolina carriers, and their subscribers, out of millions of dollars in access charges.

For the reasons stated herein, we respectfully request that the Commission issue an order granting the relief sought by AT&T, which is in the public interest, and granting such other and further relief as is just and proper.

Respectfully Submitted,

By:______MargarefUl. Fax
M. John Bowen, Jr.

Margaret M. Fox

McNair Law Firm, P. A.

Post Office Box 11390

Columbia, South Carolina 29211

Telephone: (803) 799-9800 Facsimile: (803) 753-3278 E-mail: jbowen@mcnair.net;

pfox@mcnair.net

ATTORNEYS FOR THE SOUTH CAROLINA TELEPHONE COALITION

June 15, 2012

BEFORE THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

Docket No. 2011-304-C

IN RE:

Complaint and Petition for Relief of BellSouth Telecommunications, LLC d/b/a AT&T Southeast d/b/a AT&T South Carolina v. Halo Wireless, Inc. for Breach of the Parties' Interconnection Agreement)	CERTIFICATE OF SERVICE
for Breach of the Parties' Interconnection Agreement		

I, Rebecca W. Martin, do hereby certify that I have this date served one (1) copy of the attached Brief on behalf of the South Carolina Telephone Coalition upon the following parties causing said copies to be deposited with the United States Postal Service, first class postage prepaid and properly affixed thereto, and addressed as follows:

Patrick W. Turner, Esquire AT&T South Carolina 1600 Williams Street Columbia, South Carolina 29201

John J. Pringle, Jr., Esquire Ellis, Lawhorne & Sims, P. A. Post Office Box 2285 Columbia, South Carolina 29202

Jennifer M. Larson, Esquire Steven H. Thomas, Esquire Troy P. Majoue, McGuire, Craddock & Strother, P. C. 2501 North Hardwood, Suite 1800 Dallas, Texas 75201 Nanette S. Edwards, Esquire Office of Regulatory Staff 1401 Main Street, Suite 900 Columbia, South Carolina 29201

W. Scott McCollough, EsquireMcCollough Henry, P. C.1250 South Capital of Texas HighwayBuilding 2-235Westlake, Texas 78746

J. Tyson Covey, Esquire Mayer Brown, LLP 71 South Wacker Drive Chicago, Illinois 60606

Rebecca W. Martin, Legal Assistant

McNair Law Firm, P.A. Post Office Box 11390

Columbia, South Carolina 29211

(803) 799-9800 2012

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Columbia, South Carolina